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Are 1999 Farm Bill Payments Deferrable?

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ARE 1999 FARM BILL PAYMENTS DEFERRABLE?

— by Neil E. Harl*

In legislation signed on October 22, 1999,¹ funds were appropriated for an array of assistance programs for agricultural producers and landowners. A major concern for some producers and landowners is whether any of the payments are deferrable for federal income tax purposes into 2000.²

General rule on deferrals

Taxpayers on the cash method of accounting may elect to include in income crop insurance and disaster payments in the taxable year following the year of crop loss if, under the taxpayer's practice, income from sale of the crop would have been reported in the later year.³ This election includes payments made because of damage to crops as well as the inability to plant crops.⁴ Crop insurance and disaster payments must be treated the same *if received in the same taxable year*.⁵

One election covers amounts attributable to all crops representing a trade or business.⁶ An election counts only for the tax year in which made; application to revoke the election must be made to the District Director.⁷

A taxpayer is eligible to elect to defer crop insurance and disaster proceeds if the taxpayer establishes that a substantial part of the crops (generally interpreted as more than 50 percent) would have been reported in the following year based upon the established historical sales pattern of the taxpayer.⁸ A taxpayer may not elect to defer only a portion of the insurance proceeds to the following year.⁹ It is not completely clear how one reports insurance and disaster proceeds on a crop normally sold at harvest if other crops are normally carried over, but it would seem that the proceeds of a crop normally sold at harvest could not be deferred.

To be eligible for deferral, the payments must be for the "destruction or damage to crops" caused by "drought, flood, or any other natural disaster."¹⁰ The inability to plant crops because of a natural disaster is treated as insurance proceeds received as a result of destruction or damage to crops.¹¹

The 1999 legislation

The 1999 agricultural appropriations bill¹² funds were authorized for a variety of assistance programs. A total of \$1,200,000,000 was made available for "emergency financial assistance...to producers on a farm that have incurred losses in a 1999 crop due to a disaster..."¹³ Those payments appear to be eligible for the one-year deferral if the various requirements for deferral are met.¹⁴

An amount of \$5,544,453,000 of funds was authorized "...to provide assistance to owners and producers on a farm that are eligible for final payments for fiscal year

*

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1999 under a production flexibility contract for the farm under the Agricultural Market Transition Act....¹⁵ That provision is titled, "Market Loss Assistance."¹⁶ Because the legislation does not refer to the payments as "disaster payments" or payments "for the destruction or damage to crops," the payments do not appear to be deferrable to 2000.¹⁷

Similar language was used in the provision authorizing payments to producers of the 1999 crop of oilseeds "that are eligible to obtain a marketing assistance loan."¹⁸ Again, the payments do not appear to be deferrable.¹⁹

An amount of \$325,000,000 was authorized "to provide assistance directly to livestock and dairy producers...to compensate the producers for economic losses incurred during 1999."²⁰ Those amounts are income to the producers in the year received.

Benefits to producers of upland cotton,²¹ peanuts²² and tobacco²³ are likewise not deferrable.

The legislation also authorizes the advance payment in full of remaining payments under production flexibility contracts through 2002.²⁴ Those payments would also be taxable in the year of receipt. Legislation was enacted in 1998 making payments under the Federal Agriculture Improvement and Reform Act of 1996 not subject to constructive receipt, effective for taxable years after 1995.²⁵ That legislation followed the enactment of legislation advancing, on an elective basis, the spring, 1999, federal farm program payment to the autumn of 1998.²⁶

The 1999 legislation increased the limit on marketing loan gains and loan deficiency payments for the 1999 crop year to \$150,000.²⁷

In conclusion

With net farm income expected to be lower in 1999 than in recent years, it may be good tax planning anyway to include payments in 1999 rather than to defer taxability of payments to 2000. However, the taxpayer does not have that choice except for 1999 disaster payments for crop losses.²⁸

FOOTNOTES

¹ Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, Pub. L. No. 106-78, 106th Cong., 1st Sess. (1999).

² I.R.C. § 451(d). See generally 4 Harl, *Agricultural Law* § 27.03[7] (1999); Harl, *Agricultural Law Manual* § 4.02[4] (1999). See also Harl, "Reporting Government Farm Payments," 9 *Agric. L. Dig.* 157 (1999).

³ I.R.C. § 451(d). See Rev. Rul. 91-55, 1991-2 C.B. 784, revoking Rev. Rul. 75-36, 1975-1 C.B. 143.

⁴ I.R.C. § 451(d).

⁵ Notice 89-55, 1989-1 C.B. 696.

⁶ Treas. Reg. § 1.451-6(a)(2).

⁷ Treas. Reg. § 1.451-6(b)(2).

⁸ Rev. Rul. 74-145, 1974-1 C.B. 113.

⁹ Id. See Notice 89-55, 1989-1 C.B. 696.

¹⁰ I.R.C. § 451(d).

¹¹ Id.

¹² See n. 1 *supra*.

¹³ Pub. L. No. 106-78, Sec. 801(a), 106th Cong., 1st Sess. (1999).

¹⁴ See I.R.C. § 451(d).

¹⁵ Pub. L. No. 106-78, Sec. 802, 106th Cong., 1st Sess. (1999).

¹⁶ Id.

¹⁷ I.R.C. § 451(d).

¹⁸ Pub. L. No. 106-78, Sec. 804, 106th Cong., 1st Sess. (1999).

¹⁹ See I.R.C. § 451(d).

²⁰ Pub. L. No. 106-78, Sec. 805, 106th Cong., 1st Sess. (1999).

²¹ Pub. L. No. 106-78, Sec. 806, 106th Cong., 1st Sess. (1999).

²² Pub. L. No. 106-78, Sec. 803(a), 106th Cong., 1st Sess. (1999).

²³ Pub. L. No. 106-78, Sec. 803(c), 106th Cong., 1st Sess. (1999).

²⁴ Pub. L. No. 106-78, Sec. 811, 106th Cong., 1st Sess. (1999).

²⁵ Pub. L. 105-277, Sec. 2012(b), 105th Cong., 2d Sess. (1998).

²⁶ Pub. L. 105-228, 112 Stat. 1516 (1998).

²⁷ Pub. L. No. 106-78, Sec. 813, 106th Cong., 1st Sess. (1999).

²⁸ Pub. L. No. 106-78, Sec. 801, 106th Cong., 1st Sess. (1999).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

COTENANTS. The plaintiffs first received the farm property as remainder holders after a life estate, created in 1968, held by the plaintiffs' father. The father received the life estate upon the death of the plaintiffs' mother who had received the property from her parents in 1955. However, the

plaintiffs discovered, in a title opinion in 1996, that the 1955 transfer from the grandparents to the mother was actually to the mother and father as tenants in common. Thus, the father owned one-half of the property in fee and that one-half interest passed, in part, to other heirs of the father. The plaintiffs sought to clear the title, arguing that the plaintiffs acquired title by adverse possession from 1968 to the present action. The plaintiffs actively farmed the land and paid the taxes. The defendants argued that adverse possession did not